IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

C.O.C.P.No.390 of 2006 (O&M)
Date of Decision : 18.09.2007

Dr.Mukesh Kumar and others .....Petitioners

versus

Shri D.S.Guru, IAS and another .....Respondents

CORAM : HON'BLE MR.JUSTICE HEMANT GUPTA

Present: Mr.G.S.Bal, Advocate for the petitioners.
Mr.G.S.Cheema, Sr.DAG, Punjab for the respondents.

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JUDGMENT

HEMANT GUPTA, J.

C.M.No.17647-CII of 2007

The application is allowed. The rejoinder is permitted to be taken on record.

C.O.C.P.No.390 of 2006

An advertisement No.4 of 1997 was issued by the Punjab Public Service Commission (hereinafter referred to as the Commission), vide which 500 posts of PCMS-1 Doctors were advertised. Out of those posts, 125 posts were meant for Scheduled Caste Category candidates. Out of said 125 posts, 62 were reserved for Scheduled Caste (Balmiki and Mazhabi Sikhs) and remaining 63 posts were meant for Scheduled Caste (General). Against the 125 posts reserved for Scheduled Castes Category, 303 reserved category candidates had applied. A screening test was held on 28.9.1997 by the Commission in which 279 candidates appeared. Only 59 Scheduled Caste (General) and 5 (Balmiki and Mazhabi Sikhs) cleared the

test, who were called for interview. The Commission fixed 40% as cut off marks for recommending to the post of PCMS Class-I. Such action of fixing of cut off marks for reserved category was the subject matter of challenge in the Civil Writ Petition No.3468 of 1998 *"Dr.Mukesh Kumar and another versus State of Punjab and another",* which was allowed by the Division Bench of this Court on 30.11.1998. Another writ petition bearing No.4586 of 1998 was filed wherein the petitioners claimed directions in the same terms as in the CWP No.3468 of 1998. The said writ petition was disposed of by the Division Bench of this Court vide order dated 1.3.1999 in terms of the order dated 30.11.1998 passed in CWP No.3468 of 1998, subject to the direction that appointments against the reserved category posts be made strictly in accordance with the merit by considering the candidature of even those who may have not filed writ petitions.

There was another set of writ petition filed by certain candidates belonging to reserved category challenging the decision of holding of screening test itself. The said writ petition No.19008 of 1997, *Dr.Manjit Singh and others versus State of Punjab and others"* was also allowed by the Division Bench of this Court on 30.6.1999 and a direction was issued to the Commission to interview the petitioners if they have already not been interviewed and declare the result as per their merit.

The grievance of the petitioners is that in the writ petition filed by the petitioners, this Court has directed the respondents vide order dated 30.11.1998 to recommend the names of those Scheduled Castes candidates who had appeared for viva voce test for the purpose of appointment. Therefore, the consideration of names of other reserved category candidates

in pursuance of the order passed in another writ petition, is in violation of the directions of this Court.

After hearing learned counsel for the parties, I do not find any substance in the argument raised by learned counsel for the petitioners. In Dr.Mukesh Kumar's case, the candidates qualified for the screening test but they could not be selected on account of fixation of cut off marks. Whereas, in the writ petition of Dr.Manjit Singh and another, the screening test was found arbitrary and unconstitutional and the same was quashed. Meaning thereby that neither the screening test nor cut off marks were sustained.

Since the screening test and cut off marks have been set-aside, the appointment could be made to the post reserved for Scheduled Caste category candidates on the basis of merit determined on the basis of interview/viva voce of all the eligible candidate. It would be wholly illogical and arbitrary, if the petitioner are to be appointed, whereas the candidates who have applied alongwith the petitioners were not to be appointed even though they are higher in merit.

In the merit determined of all the aforesaid candidates, the petitioners have remained unsuccessful. It cannot be said that the petitioners have to be given appointment even though the candidates who have applied with the petitioners are more meritorious.

Therefore, I do not find any violation of the directions issued by this Court, which may warrant initiation of contempt proceedings against the respondents under the Contempt of Courts Act, 1971. Consequently, the present contempt petition stands dismissed. Rule is discharged.

18-09-2007 **(HEMANT GUPTA)**
*mohinder **JUDGE**